

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

FILED
U.S. DISTRICT COURT
BRUNSWICK DIV.
2011 MAR -9 AM 8:48

CLERK C. Rowe
SO. DIST. OF GA.

DARRYL SOLOMON HOPE,

Plaintiff,

vs.

CIVIL ACTION NO.: CV210-127

BUREAU OF PRISONS; ANTHONY
HAYNES; HARLEY LIPPIN; U. S.
DEPARTMENT OF JUSTICE; ERIC
HOLDER, JR.; and ROBERT A.
BUTTERWORTH,

Defendants.

ORDER

After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. Plaintiff asserts that he has a case currently pending in Florida courts, No. 4D10-3721, and a motion has been denied. However, Plaintiff did not file a notice of appeal in that case¹ until September 2, 2010, yet he filed his Complaint in this Court on August 19, 2010. Thus, the proceedings in that case cannot form the basis of the claims Plaintiff wishes to set forth. In addition, federal penal institutions are not required to have state legal materials. Program Statement 1315.07, p. 2.² Further, inmates can "solicit or purchase legal materials from outside the institution," *id.* at p. 10, which

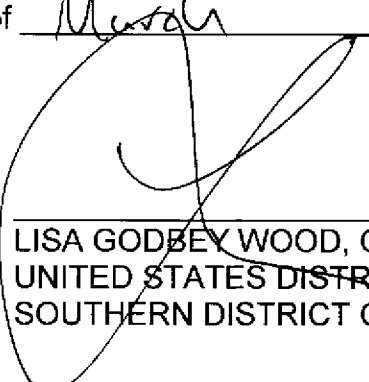
¹ <http://199.242.69.70/pls/ds/ds.docket>.

² http://www.bop.gov/policy/progstat/1315_007.pdf.

Plaintiff did. (Doc. No. 1, pp. 34-44). In short, Plaintiff has not shown that the lack of Florida legal materials in the law library at the Federal Correctional Institution in Jesup, Georgia, caused an actual injury to his pursuit of a nonfrivolous cause of action such that he can sustain an access to the courts claim. Moreover, Plaintiff's desire to have the Court construe his cause of action under both Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), and the Federal Tort Claims Act is rejected. Bivens provides relief for an inmate alleging federal actors violated his constitutional rights. Plaintiff's access to the courts claim clearly is an allegation of constitutional, not tortuous, magnitude.

Plaintiff's Objections are **overruled**. The Magistrate Judge's Report and Recommendation is adopted as the opinion of the Court. Plaintiff's Complaint is **DISMISSED** based on his failure to state a claim upon which relief may be granted. Plaintiff's Motion for Leave to Amend (Doc. No. 12) is **DENIED**. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 8 day of March, 2011.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA